

1 JOHN S. BLACKMAN (SB#114654)
2 FARBSTEIN & BLACKMAN, APC
3 411 Borel Avenue, Suite 425
4 San Mateo, California 94402-3518
5 Telephone: (650) 554-6200
6 Facsimile: (650) 554-6240

7 CARL D. CIOCHON
8 WENDEL ROSEN BLACK & DEAN, LLP
9 1111 Broadway, 24th Floor
10 Oakland, CA 94607-4036
11 Tel: (510) 834-6600
12 Fax: (510) 834-1928

13 Attorneys for Defendants
14 MARK GARIBALDI and THE GARIBALDI COMPANY

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 EDITH MACIAS, individually and on
18 behalf of similarly situated individuals;
19 HOTON DURAN; TIFFANY HUYNH;
20 AURA MENDIETA; WILLIAM
21 LABOY; MIGUEL ACOSTA; CRUZ
22 ACOSTA; CUAUHTEMOC TORAL,
23 TERESA VILLEGAS, KAPIKA
24 SALAMBUE and MARINA DURAN,

25 Plaintiffs,

26 vs.

27 THOMAS J. TOMANEK; and MARK
28 GARIBALDI, individually and doing
business as THE GARIBALDI
COMPANY,

Defendants.

CASE NO. C07 3437 JSW

NOTICE OF MOTION AND MOTION
TO BE DECLARED PREVAILING
PARTY AND FOR AWARD OF
ATTORNEY'S FEES AND COSTS;
JOINDER OF DEFENDANT
GARIBALDI IN MEMORANDUM OF
POINTS AND AUTHORITIES FILED
BY DEFENDANT TOMANEK;
SUPPORTING DECLARATIONS OF
JOHN S. BLACKMAN AND CARL D.
CIOCHON [filed separately]

DATE: March 14, 2008

TIME: 9:00 A.M.

COURTROOM: 2, 17th Floor

JUDGE: Hon. Jeffrey S. White

Date Action Filed: June 29, 2007

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on MARCH 14, 2008, at 9:00 a.m., or as soon
thereafter as counsel can be heard, defendant THE GARIBALDI COMPANY will move
this Court, located at 450 Golden Gate Avenue, 17th Floor, Courtroom 2, San Francisco,
CA 94102, for an order declaring defendant THE GARIBALDI COMPANY to be a

1 prevailing party in this action, and for an award of reasonable attorney's fees and costs
 2 pursuant to the written lease contracts between plaintiffs and moving defendants, and
 3 pursuant to the judgment of dismissal as to all defendants entered herein on January 9,
 4 2008.

5 Said motion will be made upon the grounds that moving defendant is a prevailing
 6 party under the written lease contracts which plaintiffs sued upon in this action, and that
 7 said leases provide that the prevailing party in any action involving said leases shall be
 8 entitled to an award of reasonable attorney's fees and costs incurred in the action. Said
 9 motion will be supported by the Memorandum of Points and Authorities concurrently filed
 10 herewith in this action by co-defendant TOMANEK and by moving party GARIBALDI'S
 11 Joinder in said Memorandum, by the Declarations of John S. Blackman and Carl D.
 12 Ciochon filed herewith, by the complete files and records in this action, and such other and
 13 further evidence as may be presented at the hearing.

14
 15 DATED: January 23, 2008

16
 17 
 18

19
 20
 21
 22
 23
 24
 25
 26
 27
 28
 JOHN S. BLACKMAN
 Attorneys for Mark Garibaldi and
 The Garibaldi Company

MEMORANDUM OF POINTS AND AUTHORITIES

23 Defendant THE GARIBALDI COMPANY ("GARIBALDI") relies upon the same
 24 points and the same authorities as co-defendant TOMANEK for its entitlement to an
 25 award of attorney's fees and costs as a prevailing party in plaintiffs' action on the lease.
 26 GARIBALDI also relies on the same documents attached as exhibits to the Declaration of
 27 Sara Allman which is being submitted in support of co-defendant TOMANEK's motion. In
 28

1 order to avoid cluttering the court's file with redundant paperwork, GARIBALDI adopts,
2 incorporates and joins the motion and supporting Memorandum of Points and
3 Authorities filed concurrently herewith by Defendant TOMANEK.

4
5 GARIBALDI proffers the Declarations of John S. Blackman of Farbstein &
6 Blackman, APC, and Carl D. Ciochon of Wendel, Rosen, Black & Dean, LLP in support of
7 its application for an award of attorney's fees and costs. Those two declarations will be
8 filed separately but concurrently herewith.

9
10 As set forth in the Declaration of John S. Blackman filed herewith and the exhibits
11 attached thereto, through December 31, 2007 the Farbstein law firm has charged
12 GARIBALDI attorney's fees totaling \$21,901.50 in the defense of this action, and \$23.55 in
13 costs. The Farbstein law firm has further charged \$4,443.00 in attorney's fees and \$0.00 in
14 costs in this matter through January 21, 2008, i.e., up to the time just prior to filing of this
15 motion. Thus the total amount of fees and costs incurred in this action by GARIBALDI
16 from the Farbstein law firm up to the time of filing this motion is \$26,368.05.

17
18 As set forth in the Declaration of Carl D. Ciochon filed herewith and the exhibits
19 attached thereto, through December 31, 2007 the Wendel, Rosen law firm has charged
20 GARIBALDI attorney's fees totaling \$28,060.50 in the defense of this action, and \$3,600.32
21 in costs. The total amount of fees and costs incurred in this action by GARIBALDI from
22 the Wendel, Rosen law firm up to the time of filing this motion is \$31,660.82.

23
24 The grand total of fees and costs incurred by GARIBALDI up to the point of
25 making this motion is \$58,028.87. If the court grants this motion, Defendant GARIBALDI
26 requests leave of court to add to that amount, or to whatever amount is found owing by the
27 court, the fees and costs incurred by GARIBALDI in further proceedings relating to the
28

1 recovery of said fees and costs, e.g., fees and costs incurred in reviewing and responding to
2 plaintiffs' opposition brief, writing its reply brief, and attendance at the hearing on this
3 motion.

4
5 Defendant THE GARIBALDI COMPANY therefore respectfully requests that the
6 court declare that it is a prevailing party in this action, and that GARIBALDI be awarded
7 reasonable attorney's fees and costs as set forth above.

8
9 DATED: January 23, 2008

FARBSTEIN & BLACKMAN, APC



JOHN S. BLACKMAN
Attorneys for Mark Garibaldi and
The Garibaldi Company

PROOF OF SERVICE

Macias v. Tomanek, , Mark Garibaldi, The Garibaldi Company
 USDC, Northern California, Case No. C 07-3437 JSW

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. I am employed in the office of a member of the bar of this court at whose direction the service was made. My business address is 411 Borel Avenue, Suite 425, San Mateo, California 94402-3518. My electronic notification address is stf@farbstein.com. On January 23, 2008, I served the following document(s):

**NOTICE OF MOTION AND MOTION TO BE DECLARED PREVAILING PARTY
 AND FOR AWARD OF ATTORNEY'S FEES AND COSTS; JOINDER OF
 DEFENDANT GARIBALDI IN MEMORANDUM OF POINTS AND
 AUTHORITIES FILED BY DEFENDANT TOMANEK; SUPPORTING
 DECLARATIONS OF JOHN S. BLACKMAN AND CARL D. CIOCHON**

on the following person(s) by the method(s) indicated below:

Elizabeth Noonan Brancart, Esq. Christopher A. Brancart, Esq. Brancart & Brancart P. O. Box 686 Pescadero, CA 94060	Attorneys for plaintiffs Tel: 650-879-0141 Fax: 650-879-1103 email: cbrancart@brancart.com ebrancart@brancart.com
Sara B. Allman, Esq. Allman & Nielsen 100 Larkspur Lndg Cir #212 Larkspur, CA 94939	Attorneys for defendant Thomas J. Tomanek Tel: 415-461-2700 Fax: 1-415-461-2726 all-niel@pacbell.net

☐ by transmitting via facsimile on this date from fax number (650) 554-6240 the document(s) listed above to the fax number(s) set forth herein. The transmission was completed before 5:00 p.m. and was reported complete and without error. The transmission report is attached to this proof of service. Service by fax was made by agreement of the parties confirmed in writing.

☒ by placing the document(s) listed above in a sealed envelope(s) with postage thereon fully prepaid, for deposit in the United States mail at San Mateo, California addressed as set forth herein. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid in the ordinary course of business.

☐ by placing the document(s) listed above in a sealed envelope(s) and by causing personal delivery of the envelope(s) to the person(s) at the address(es) set forth herein. Signed proof of service by the process server or delivery service is attached to this proof of service.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth herein.

☐ by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date

1 of consignment to the address(es) set forth herein. A copy of the consignment slip is
2 attached to this proof of service.

3 [X] by transmitting the document(s) listed above via the Court's ECF system to the persons
4 at the email address(es) set forth herein. The transmission was completed before 5:00
5 p.m. and was reported complete and without error.

6 I declare under penalty of perjury under the laws of the United States and the State of
7 California that the above is true and correct. Executed at San Mateo, California, on January
8 23, 2008.

9 
10 SUZANNE T. FARBSTEIN
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28